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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/759,430 | 01/12/2001 | Lee R. Bolduc | 105-C1 | 1423 |
| 27777 | 7590 | 05/04/2004 | EXAMINER | |
| PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003 | | | ROBERTS, PAUL A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3731 | |

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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1/12/2001

Lee Bolduc

106-C1

EXAMINER

Paul Roberts

| ART UNIT | PAPER |
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3731

20040421

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Commissioner for Patents

Please see attached letter.

Election/Restrictions

Newly submitted claims 31-35 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: See below.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31-35 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

- I. Claims 14-30, 36, and 37, drawn to a method of using wires and a body, classified in class 606, subclass 213.
- II. Claims 31-33 and 35, drawn to a method of using a wire, classified in class 606, subclass 219.
- III. Claim 34, drawn to a method of using a hub and a wire, classified in class 606, subclass 151.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the various methods are not disclosed as being capable of independent use together. Inventions I-III have different modes of operation since the various methods recite different methods of using different parts of an anastomosis apparatus.

Allowable Subject Matter

Claims 14-30, 36, and 37 are allowed.

The following is an examiner's statement of reasons for indicating allowable subject matter: the closest prior art found is Gifford III et al. 20030100910. Gifford III et al. discloses the structural limitations of a surgical anastomosis apparatus as claimed in claims 14 and 30, but the method of use of the Gifford III et al. device does not use biased clips to affect the anastomosis. The same deficiencies are found in 5234447 and 5250058, neither patent has clips that contain a biased and unbiased state.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

This application is in condition for allowance except for the presence of claims 31-35. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.


Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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04/27/04



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